

# SENATE JOURNAL

EIGHTY-FIRST LEGISLATURE — REGULAR SESSION

AUSTIN, TEXAS

## PROCEEDINGS

### SECOND DAY

(Wednesday, January 14, 2009)

The Senate met at 11:00 a.m. pursuant to adjournment and was called to order by the President.

The roll was called and the following Senators were present: Averitt, Carona, Davis, Deuell, Duncan, Ellis, Eltife, Estes, Fraser, Gallegos, Harris, Hegar, Hinojosa, Huffman, Jackson, Lucio, Nelson, Nichols, Ogden, Patrick, Seliger, Shapiro, Shapleigh, Uresti, Van de Putte, Watson, Wentworth, West, Whitmire, Williams, Zaffirini.

The President announced that a quorum of the Senate was present.

Rabbi Alan Freedman, Temple Beth Shalom, Austin, offered the invocation as follows:

Almighty God, prosper the work of our hands. Although this session has just begun, we recognize the immense importance and complexity of the work that lies before this body in the few short weeks that lie ahead. There is so much work to be done for the people of Texas and so little time to accomplish it. Therefore, help us to take into our hearts the prayer contained in Psalm 90 in which we ask You, Holy One, to teach us to number our days that we might obtain a heart of wisdom. May the Members of this body, indeed, be inspired by You to govern with wise hearts and thereby make each day count in the service of the people of this great state. For when we do so, our work in this Chamber shall surely be worthy of Your blessing. Thus, will the final words of Psalm 90 be fulfilled: May the favor of the Lord, our God, be upon us; let the work of our hands prosper, O prosper the work of our hands. And let us say: Amen.

Senator Whitmire moved that the reading of the Journal of the proceedings of yesterday be dispensed with and the Journal be approved as printed.

The motion prevailed without objection.

### MESSAGE FROM THE HOUSE

HOUSE CHAMBER  
Austin, Texas  
January 14, 2009

The Honorable President of the Senate  
Senate Chamber  
Austin, Texas



Mr. President:

I am directed by the House to inform the Senate that the House has taken the following action:

THE HOUSE HAS PASSED THE FOLLOWING MEASURES:

**HCR 17**, Congratulating His Eminence, Daniel Cardinal DiNardo, Archbishop of Galveston-Houston.

**HCR 19**, Inviting the governor to address a joint session of the legislature on January 27, 2009.

Respectfully,

/s/Robert Haney, Chief Clerk  
House of Representatives

#### PHYSICIAN OF THE DAY

Senator Hegar was recognized and presented Dr. Henry Boehm of Brenham as the Physician of the Day.

The Senate welcomed Dr. Boehm and thanked him for his participation in the Physician of the Day program sponsored by the Texas Academy of Family Physicians.

#### SENATE RESOLUTION 8

Senator Seliger offered the following resolution:

WHEREAS, The Senate of the State of Texas is pleased to join citizens across the state in celebrating January 14, 2009, as Andrews Day at the State Capitol; and

WHEREAS, Located at the heart of the Permian Basin, Andrews is the county seat of Andrews County, a vast region of rolling prairie typical of the southern High Plains; the county ranks second in oil production among counties in the Permian Basin, a region that holds 25 percent of the nation's oil and gas reserves; and

WHEREAS, The City of Andrews offers a healthy entrepreneurial environment and diversified economy that promote the progressive growth of the city and the surrounding area; city leaders have proven to be forward-thinking and innovative in supporting the infrastructure to sustain the city's "Move Ahead" attitude; and

WHEREAS, The City of Andrews offers citizens and visitors alike a wide range of recreational opportunities, including a challenging 18-hole golf course and a number of outstanding parks and athletic facilities; with two annual bluegrass festivals and such attractions as the Andrews County Junior Livestock Show and the annual arts and crafts shows, Andrews has created an environment where the arts and culture thrive; and

WHEREAS, With its can-do attitude and hardworking population, the City of Andrews stands poised to move into a bright future; now, therefore, be it

RESOLVED, That the Senate of the State of Texas, 81st Legislature, hereby commend the citizens of Andrews for their many contributions to our state and extend to them best wishes for a memorable Andrews Day at the State Capitol; and, be it further

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RESOLVED, That a copy of this Resolution be prepared for the citizens of Andrews as an expression of esteem from the Texas Senate.

**SR 8** was read and was adopted without objection.

**GUESTS PRESENTED**

Senator Seliger was recognized and introduced to the Senate a delegation of citizens from the City of Andrews.

The Senate welcomed its guests.

**RECESS**

On motion of Senator Whitmire, the Senate at 11:07 a.m. recessed until 12:00 noon today.

**AFTER RECESS**

The Senate met at 12:33 p.m. and was called to order by the President.

**SENATE RESOLUTION 14**

Senator Williams offered the following resolution:

BE IT RESOLVED by the Senate of the State of Texas, That the Rules of the Senate of the 80th Legislature are adopted as the Permanent Rules of the Senate of the 81st Legislature with the following modifications:

1. Amend Rule 5.11 to read as follows:

**SPECIAL ORDERS**

Rule 5.11. (a) Any bill, resolution, or other measure may on any day be made a special order for a future time of the session by an affirmative vote of two-thirds of the members present.

(b) A special order shall be considered at the time for which it is set and considered from day to day until disposed of, unless at the time so fixed there is pending business under a special order, but such pending business may be suspended by a two-thirds vote of all the members present. If a special order is not reached or considered at the time fixed, it shall not lose its place as a special order. All special orders shall be subject to any Joint Rules and Rule 5.10.

(c) Upon the affirmative vote of four-fifths of the members present, a special order may be reset to an earlier time than previously scheduled.

(d) Notwithstanding subsection (a), a bill or resolution relating to voter identification requirements reported favorably from the Committee of the Whole Senate may be set as a special order for a time at least 24 hours after the motion is adopted by a majority of the members of the Senate.

2. Amend Rule 6.15 to read as follows:

**WHEN RECORD VOTE REQUIRED; CALLS FOR YEAS AND NAYS**

**[REQUIRED]**

Rule 6.15. (a)(1) A vote on [Upon the] final passage of a bill, a resolution proposing or ratifying a constitutional amendment, or a resolution other than a resolution of a purely ceremonial or honorary nature shall be by record vote, with the vote of each member entered in the journal.

(2) A vote on [all amendments proposed to the Constitution, all bills appropriating money or lands for any purpose, all bills containing an immediate effect clause,] all motions to suspend the constitutional three-day rule, [and] all questions requiring a vote of two-thirds of the members elected, all motions on whether to concur in House amendments to Senate bills, and all motions on whether to adopt a conference committee report shall be by record vote, with the vote of each member [the presiding officer shall call for the yeas and nays, and they shall be] entered in the journal.

(3) Upon all other questions requiring a vote of two-thirds of the members present, including a motion to suspend the rules, the presiding officer shall determine if there is objection and, if so, call for the yeas and nays, but they shall not be entered into the journal unless required under Subsection (b) of this rule. If no objection is made, the journal entry shall reflect a unanimous consent vote of the members present without necessity of a roll call of yeas and nays.

(b) On any other question, at [At] the desire of any three members present, the yeas and nays shall be entered on the journal, and the names of the members present and not voting shall be recorded immediately after those voting in the affirmative and negative, and such members shall be counted in determining the presence of a quorum. (Constitution, Article III, Section 12)

(c)(1) Any nonprocedural motion adopted by voice vote, without objection, or with unanimous consent shall be reflected in the journal by showing members present as "yea", unless a member registers otherwise with the Secretary of the Senate.

(2) The following statement shall be entered in the journal after each vote taken as provided in Subdivision (1) of this subsection:

"All members are deemed to have voted 'Yea' except as follows:

Nays:

PNV:

Absent-Excused:

Absent:"

(d) A member must be on the floor of the Senate or in an adjacent room or hallway on the same level as the Senate floor or gallery in order to vote; but a member who is out of the Senate when a record vote is taken and who wishes to be recorded shall be permitted to do so provided:

(1) the member was out of the Senate temporarily, having been recorded earlier as present;

(2) the vote is submitted to the Secretary of the Senate prior to adjournment or recess to another calendar day; and

(3) the recording of the member's vote does not change the result as announced by the chair.

(e) Once begun, a roll call may not be interrupted for any reason.

3. Amend Rule 16.07 as follows:

MATTERS REQUIRING VOTE OF MAJORITY  
OF MEMBERS OF SENATE

Rule 16.07. A vote of the majority of the members of the Senate is required to:

(1) pass a resolution initially adopting temporary or permanent rules of the Senate; Rule 21.01

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- (2) adopt, amend, or rescind any Joint Rules of the two Houses; Rules 21.02 and 22.02
- (3) adopt resolution to suspend conference committee rules; Rule 12.08
- (4) commit or recommit bill, resolution, or petition to a committee; Rule 6.08
- (5) hold an executive session; Rule 15.02
- (6) pass a resolution amending the Rules of the Senate.
- (7) set voter identification requirement bills for special order; Rule 5.11(d)

**SR 14** was read.

#### **POINT OF ORDER**

Senator Shapleigh raised a point of order against further consideration of **SR 14** in that the resolution should be referred to committee.

#### **POINT OF ORDER RULING**

The President stated that the point of order was respectfully overruled.

#### **PERSONAL PRIVILEGE STATEMENT**

Senator Van de Putte was recognized to speak on a matter of personal privilege.

**(Senator Duncan in Chair)**

**(President in Chair)**

Senator Ellis offered the following amendment to the resolution:

#### **Floor Amendment No. 1**

Amend **SR 14** as follows:

- (1) On page 2, line 1, strike "voter identification requirements", and add the following: "protecting families through insurance rate regulation and foreclosure prevention"
- (2) On page 5, line 1, strike "voter identification requirements", and add the following: "protecting families through insurance rate regulation and foreclosure prevention"

The amendment to **SR 14** was read.

On motion of Senator Williams, Floor Amendment No. 1 was tabled by the following vote: Yeas 19, Nays 12.

Yea: Averitt, Carona, Deuell, Duncan, Eltife, Estes, Fraser, Harris, Hegar, Huffman, Jackson, Nelson, Nichols, Ogden, Patrick, Seliger, Shapiro, Wentworth, Williams.

Nay: Davis, Ellis, Gallegos, Hinojosa, Lucio, Shapleigh, Uresti, Van de Putte, Watson, West, Whitmire, Zaffirini.

Senator Uresti offered the following amendment to the resolution:

#### **Floor Amendment No. 2**

Amend **SR 14** as follows:

- (1) On page 2, amend modification 1, after "voter identification requirements", by inserting the following: "or increasing veterans' benefits"

(2) On page 2, amend modification 2, after "voter identification requirements", by inserting the following: "or increasing veterans' benefits"

The amendment to **SR 14** was read.

On motion of Senator Williams, Floor Amendment No. 2 was tabled by the following vote: Yeas 19, Nays 12.

Yea: Averitt, Carona, Deuell, Duncan, Eltife, Estes, Fraser, Harris, Hegar, Huffman, Jackson, Nelson, Nichols, Ogden, Patrick, Seliger, Shapiro, Wentworth, Williams.

Nay: Davis, Ellis, Gallegos, Hinojosa, Lucio, Shapleigh, Uresti, Van de Putte, Watson, West, Whitmire, Zaffirini.

Senator Lucio offered the following amendment to the resolution:

#### **Floor Amendment No. 3**

Amend **SR 14** as follows:

(1) On page 2, line 1, strike "voter identification requirements", and add the following: "job creation and assistance to those seeking employment"

(2) On page 5, line 1, strike "voter identification requirements", and add the following: "job creation and assistance to those seeking employment"

The amendment to **SR 14** was read.

On motion of Senator Williams, Floor Amendment No. 3 was tabled by the following vote: Yeas 19, Nays 12.

Yea: Averitt, Carona, Deuell, Duncan, Eltife, Estes, Fraser, Harris, Hegar, Huffman, Jackson, Nelson, Nichols, Ogden, Patrick, Seliger, Shapiro, Wentworth, Williams.

Nay: Davis, Ellis, Gallegos, Hinojosa, Lucio, Shapleigh, Uresti, Van de Putte, Watson, West, Whitmire, Zaffirini.

Senator Watson offered the following amendment to the resolution:

#### **Floor Amendment No. 4**

Amend **SR 14** as follows:

(1) On page 2, line 1 strike "voter identification requirements" and insert the following: "full funding of Children's Health Insurance Program"

(2) On page 5, line 1 strike "voter identification requirements" and insert the following: "full funding of Children's Health Insurance Program"

The amendment to **SR 14** was read.

On motion of Senator Williams, Floor Amendment No. 4 was tabled by the following vote: Yeas 19, Nays 12.

Yea: Averitt, Carona, Deuell, Duncan, Eltife, Estes, Fraser, Harris, Hegar, Huffman, Jackson, Nelson, Nichols, Ogden, Patrick, Seliger, Shapiro, Wentworth, Williams.

Nay: Davis, Ellis, Gallegos, Hinojosa, Lucio, Shapleigh, Uresti, Van de Putte, Watson, West, Whitmire, Zaffirini.

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Senator Van de Putte offered the following amendment to the resolution:

**Floor Amendment No. 5**

Amend **SR 14** as follows:

(1) On page 2, line 1, strike "voter identification requirements", and add the following: "increasing public school investments and resulting property tax relief"

(2) On page 5, line 1, strike "voter identification requirements", and add the following: "increasing public school investments and resulting property tax relief"

The amendment to **SR 14** was read.

On motion of Senator Williams, Floor Amendment No. 5 was tabled by the following vote: Yeas 19, Nays 12.

Yea: Averitt, Carona, Deuell, Duncan, Eltife, Estes, Fraser, Harris, Hegar, Huffman, Jackson, Nelson, Nichols, Ogden, Patrick, Seliger, Shapiro, Wentworth, Williams.

Nay: Davis, Ellis, Gallegos, Hinojosa, Lucio, Shapleigh, Uresti, Van de Putte, Watson, West, Whitmire, Zaffirini.

Senator West offered the following amendment to the resolution:

**Floor Amendment No. 6**

Amend **SR 14** as follows:

(1) On pages 1 and 2, amend modification 1, by striking proposed subsection (d) and substituting the following appropriately lettered subsection:

"( ) Notwithstanding subsection (a), a bill or resolution relating to repealing tuition deregulation and requiring legislative approval of tuition rates at institutions of higher education reported favorably from the committee of the senate may be set as a special order for a time at least 24 hours after the motion is adopted by a majority of the members of the Senate."

(2) On page 5, amend modification 3, by striking proposed subsection (7) and substituting an appropriately numbered subsection, to read as follows:

"( ) set bills relating to requiring legislative approval of tuition rates at institutions of higher education for special order; Rule 5.11(d)".

The amendment to **SR 14** was read.

On motion of Senator Williams, Floor Amendment No. 6 was tabled by the following vote: Yeas 19, Nays 12.

Yea: Averitt, Carona, Deuell, Duncan, Eltife, Estes, Fraser, Harris, Hegar, Huffman, Jackson, Nelson, Nichols, Ogden, Patrick, Seliger, Shapiro, Wentworth, Williams.

Nay: Davis, Ellis, Gallegos, Hinojosa, Lucio, Shapleigh, Uresti, Van de Putte, Watson, West, Whitmire, Zaffirini.

**POINT OF ORDER**

Senator Shapleigh raised a point of order against further consideration of **SR 14**.

The President requested that Senator Shapleigh submit his point of order in writing.

**RECESS**

On motion of Senator Whitmire, the Senate at 3:49 p.m. recessed until 4:10 p.m. today.

**AFTER RECESS**

The Senate met at 4:45 p.m. and was called to order by the President.

**RECESS**

On motion of Senator Whitmire, the Senate at 4:50 p.m. recessed until 5:05 p.m. today.

**AFTER RECESS**

The Senate met at 5:30 p.m. and was called to order by the President.

**POINT OF ORDER**

Senator Shapleigh submitted to the President the following point of order:

I raise a Point of Order regarding Article 4, Section 16(b) of the Texas Constitution, which grants authority to the Lieutenant Governor.

Since no Senate rules have been adopted to govern the 81st Legislative Session, the Lieutenant Governor's powers are limited to those granted by the Texas Constitution, specifically Article 4, Section 16.

By recognizing Senator Williams on Senate Resolution 14, by ruling on points of order, and other substantive matters, the Lieutenant Governor has made substantive rulings from the chair and has thus exceeded the powers granted to him by the Texas Constitution.

Senate Resolution 14 has thus been considered under a procedure not recognized by the Texas Constitution, and thus the proceedings and Senate Resolution 14, as a fruit of the proceedings are void.

SHAPLEIGH

**POINT OF ORDER RULING**

The President stated that the point of order was respectfully overruled.

On motion of Senator Williams, **SR 14** was adopted by the following vote: Yeas 18, Nays 13.

Yea: Averitt, Deuell, Duncan, Eltife, Estes, Fraser, Harris, Hegar, Huffman, Jackson, Nelson, Nichols, Ogden, Patrick, Seliger, Shapiro, Wentworth, Williams.

Nay: Carona, Davis, Ellis, Gallegos, Hinojosa, Lucio, Shapleigh, Uresti, Van de Putte, Watson, West, Whitmire, Zaffirini.

**REMARKS ORDERED PRINTED**

On motion of Senator Williams and by unanimous consent, the closing remarks regarding **SR 14** were ordered reduced to writing and printed in the *Senate Journal*.

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On motion of Senator West and by unanimous consent, all of the debate and remarks regarding **SR 14** were ordered reduced to writing and printed in the *Senate Journal*.

The remarks will be printed in an addendum to this day's journal.

**HOUSE CONCURRENT RESOLUTION 19**

The President laid before the Senate the following resolution:

**HCR 19**, Inviting the governor to address a joint session of the legislature on January 27, 2009.

DUNCAN

**HCR 19** was read.

On motion of Senator Duncan and by unanimous consent, the resolution was considered immediately and was adopted by a *viva voce* vote.

All Members are deemed to have voted "Yea" on the adoption of the resolution.

**SENATE CONCURRENT RESOLUTION 3**

The President laid before the Senate the following resolution:

WHEREAS, Section 17, Article III, Texas Constitution, provides that neither house of the legislature may adjourn for more than three days without the consent of the other house; now, therefore, be it

RESOLVED by the 81st Legislature of the State of Texas, That each house grant the other permission to adjourn for more than three days during the period beginning on Wednesday, January 14, 2009, and ending on Monday, January 26, 2009.

WHITMIRE

**SCR 3** was read.

On motion of Senator Whitmire and by unanimous consent, the resolution was considered immediately and was adopted by a *viva voce* vote.

All Members are deemed to have voted "Yea" on the adoption of the resolution.

**RESOLUTIONS OF RECOGNITION**

The following resolutions were adopted by the Senate:

**Congratulatory Resolutions**

**SCR 2** by Seliger, Commemorating the centennial of West Texas A&M University.

**SR 7** by Ogden, Recognizing Walter R. Pond on the occasion of his retirement from the Rockdale Independent School District.

**SR 9** by Nelson, Recognizing Cheryl Baker on the occasion of her retirement from the Department of Homeland Security.

**SR 10** by West, Recognizing the City of Dallas on the occasion of its 27th annual Martin Luther King, Jr., Birthday Celebration.

**SR 11** by Van de Putte, Recognizing Michael Wayne Thomas for his contributions to the San Antonio community.

**SR 12** by Van de Putte, Recognizing Judith A. House on the occasion of her retirement from the Office of the Comptroller of Public Accounts.

**SR 13** by Ogden, Congratulating members of the TALL XI class for their selection as participants.

**SR 15** by West, Recognizing musician John Legend for his accomplishments in the entertainment field.

**SR 16** by Zaffirini, Recognizing members of the Washington's Birthday Celebration Association of Laredo on the occasion of its 112th celebration.

**HCR 17** (Lucio), Congratulating His Eminence, Daniel Cardinal DiNardo, Archbishop of Galveston-Houston.

**ADJOURNMENT**

On motion of Senator Whitmire, the Senate at 6:59 p.m. adjourned until 1:30 p.m. Monday, January 26, 2009.